92-1543

Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

NO.

R.D. WRIGHT, a/k/a DON WRIGHT, a/k/a R.DON WRIGHT,

PETITIONER

VERSUS

STANLEY WRIGHT, TRUSTEE

RESPONDANT

PETITION FOR A WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The Petitioner, R. DON WRIGHT ("WRIGHT"), respectfully prays that a writ of certiorari issue to review the judgement and opinion of the UNITED STATES COURT OF APPEALS for the FIFTH CIRCUIT entered in this proceeding on DECEMBER 22, 1992.

QUESTIONS PRESENTED FOR REVIEW

1.Whether a debtor in bankruptcy waives his Fourth Amendment rights,by filing bankruptcy.

2.Whether family members of a debtor in bankruptcy, both adult and minors who have not filed bankruptcy waive their rights provided by the Fourth Amendment, and have so objected to a search of their personal property by creditors of the debtor, to inspect, inventory, photograph and appraise such property, without a proper warrant to do so.

3. Whether such an order by the Bankruptcy Court is lawful, and can sanction the debtor for not allowing such a search to take place under the title of an appraisal.

4. Whether a debtor can be denied a discharge, along with other sanctions, and creditors of debtor can be given relief asked for in a complaint, when no timely complaint was filed in the 60 day period allowed for filing such complaints.

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28 U.S.C. §1334

11 U.S.C. §341 (a)

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11 U.S.C. §727 (a) (6)

Bankruptcy Rule 4004 (a)(b)

Bankruptcy Rule 4007 (c)

Bankruptcy Rule 9006 (b) (3)

OPINIONS BELOW

The opinion of the Court of Appeals is attached hereto as Appendix A. The opinion of the United States District Court is attached hereto as Appendix B. The opinion of the Bankruptcy Court is attached hereto as Appendix C.

Jurisdictional Statement

The judgement of the Court of Appeals for the Fifth Circuit was entered on December 22, 1992. The jurisdiction of this court is invoked pursant to 28 U.S.C. 1254(1).

CONSTITUTION PROVISIONS AND STATUTES INVOLVED

This case involves the interpretation of the Fourth Amendment to the Constitution of the United States which states:"The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated, and no warrant shall issue, but upon probable cause, supported by Oath or affirmation , and particularly describing the place to be searched and the persons or things to be seized."

This case also involves the interpretation

of Bankruptcy rule 4004, which relates to the grant or denial of a discharge pursuant to §727, provides in pertinent part:

(a) Time for filing complaint objecting to discharge:notice of time fixed.In a chapter 7 liquidation case a complaint objecting to the debtor's discharge under §727(a) of the code shall be filed not later than 60 days following the first day set for the meeting of creditors held pursuant to §341(a).

(b)Extension of time. On motion of any party in interest,after hearing on notice the court may extend for a cause the time for filing a complaint objecting to discharge. The motion shall be made before time has expired. Rule 4004 is Rule 4007(c) which provides:

A complaint to determine the dischargeability of any debt pursuant to §523(c) of the code shall be filed not later than 60 days following the first date set for the meeting of creditors held pursuant to §341(a).

STATEMENT OF THE CASE

This case was appealed to the Fifth Circuit

pursuant to 28 U.S.C. §1334. Wright filed chapter 11 bankruptcy in 1987, this was converted to a chapter 7 in 1988.No timely complaints were filed objecting to discharge. No timely motions for an extension of time were filed. The Bankruptcy Court allowed time barred complaints to be filed and denied Wrights motion to dismiss the complaints as untimely and give Wright a discharge as provided for in Bankruptcy rules and in accordance with the Congressional mandate relating to complaints filed past the 60 day filing time.

Two creditors objected to the list of exempt property of Wright. No specific item was pointed out. The Bankruptcy Court then issued an order that the creditors could appraise and inspect the exempt items. Wright did not object to this order. A notice of appraisal was sent to Wright stating that the creditors would "enter the home of Wright and his family and inventory its' contents, and photograph all items in the homestead";Wright, his spouse, his adult daughter, and his minor son all filed objections

to the Bankruptcy Court concerning the violations of their Fourth Amendment rights concerning searches without a proper warrant. No warrant was ever issued.Wright informed the creditors and the Bankruptcy Court he would make the exempt items for inspection"outside the home" so as not to let creditors, attorneys, appraisers and guests of creditors to inspect, inventory, and photograph his family members personal items. No person other than Wright had filed Bankruptcy. Wright was ordered several times to allow the search and each time he disobeyed the order which would let creditors rummage through everything in the home from his wifes'and daughters' underwear drawer to his minor sons' baseball cards.Subsequently the Bankruptcy court sanctioned Wright by denying his discharge, striking his answers to the untimely complaints, awarding monetary sanctions, and giving creditors all relief asked for in the untimely filed complaints, which also included a lien on Wrights' homestead in violation of Texas Constitutional Law.

Wright and his family members also filed with the Bankruptcy Court and subsequently with the District Court motions for protective orders and or a stay until the ruling on the time barred complaints and granting of a discharge. All were denied.

Wright appealed the Bankruptcy Courts sanctions to the District Court which affirmed the Bankruptcy Court, but did not in any way address the issues in the appeal of the late filed complaints and cited no authority on the search order being legal upon the home of Wright.

Wright appealed to the Fifth Circuit which affirmed the District Court, but again did not address the issues in the appeal concerning the time barred complaints and concluded "the order allowing access to the property was reasonable".

REASONS FOR GRANTING THE WRIT

The opinion of the Fifth Circuit creates a conflict between the Circuit Courts and the Fifth Circuits' own ruling pertaining to late filed complaints concerning the dischargeability of debts. See In re Alton, 837 F2d 457 (11th

Cir. 1988 and Nealy v. Mercheson, 815 F2d 345 (5th Cir. 1987).

The opinion of the Fifth Circuit clearly creates a conflict between the rights provided by the Fourth Amendment to the Constitution and the Fifth Circuits' interpretation of the power of a Bankruptcy Court to nullify these rights as to debtor in bankruptcy and the rights of members of the debtors' family members living at the same residence. Nowhere in the Constitution does it state by filing bankruptcy a debtor waives rights provided to him. In a greater scope nowhere in the Constitution states that simply by being related to a debtor, this somehow waives Constitutional rights. Nowhere in the bankruptcy law or rules is it stated that any of the above creates a waiver of an individuals' rights as provided by the Fourth Amendment to the Constitution.

The strictness of the bankruptcy rules are illustrated in In re Alton, 837 F2d 457 (11th Cir. 1988) where a creditors's argument for an equitable extension so as to permit an untimely

objection was denied, even though the debt in question had allegedly been fraudulently procured and the creditor objecting had received no bar date notice from the bankruptcy court. The Circuit Court affirmed the holdings of the Bankruptcy Court and the District Court, each of which had previously found that the creditor had actual notice of the proceedings and therefore had a duty to inform himself of hearings and bar date. 837 F2d 458.

In Nealy v. Mercheson, 815 F2d 345 (5th Cir. 1987), a creditor received a clerks's notice setting the §341(a) Creditor's meeting but the notice contained no bar date for filing objections to dischargeability. Thereafter, the clerk advised the creditor that no deadline had been established for filing objections dischargeability. The creditor ultimately filed its objections but did so ten days outside the sixty day notice period. 815 F2d 346. In holding the clerk's omission did not suspend the fixed limitation period and that the creditor had notice of the proceedings and ample opportunity

to timely file, the court observed that Rule 4007(c) indicates:

A strong intent that the participants in bankruptcy proceedings be assured that within the set period of sixty days they can know which debts are subject to exception to discharge. This fixed relatively short limitation period enables the debtor and creditors to make better informed decisions early in a proceedings.

815 F2d at 346. The court further observed that Rule 4007 sets a fixed limitation period of sixty days and further constrains the granting of extensions. The bankruptcy court can extend the time only if the creditor has filed a motion before the sixty day period expires, and then only "for cause". Rule 9006(b)(3) explicity accepts Rule 4007(c) from the"excusable neglect" standard, permitting time enlargements "only to the extent and under the conditions" stated in Rule 4007.815 F2d 346. The court further noted that the facts of the case necessitated dismissal of the complaint.

CONCLUSION

The opinion of the Fifth Circuit in this case interpreting Rule 4004 (a)(b) and Rule 4007(c) of the Bankruptcy rules conflicts with In re Alton, 837 F2d 457 (11th Cir. 1988) and Nealy v. Mercheson, 815 F2d 345 (5th Cir.1987) concerning timely filed complaints to determine dischargeability of debts.

In view of the rising number of bankruptcy filings by individuals in this country,petitioner respectfully submits that certiorari should be granted in this case to resolve the question of whether or not a order of a bankruptcy court granting creditors the right to search, inventory, and photograph property of a non debtor is lawful,and violates their Fourth Amendment rights if done without a proper search warrant,and can a debtor be sanctioned for not obeying such an order.

Respectfully submitted

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APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

NO. 92-1604

SUMMARY CALENDAR

IN THE MATTER OF : R. DON WRIGHT, DEBTOR.

R.DON WRIGHT, APPELLANT,

VERSUS

STANLEY WRIGHT, TRUSTEE, APPELLEE.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS

(1:91-CV-061-C (con. w/1:91-CV-062-C)

Filed December 22,1992

Before POLITZ, CHIEF JUDGE, JOLLY and EMILIO M. GARZA, CIRCUIT Judges.

POLITZ, Chief Judge:

Don Wright, Debtor in Bankruptcy, appeals the imposition of sanctions resulting in the entry of default judgement in favor of his creditors. Finding no error, we affirm.

*Local Rule 47.5 provides: "the publication of opinions that have no precedential value and merely decide particular cases on the basis of well settled principals of law imposes needless expense to the public and burdens on the legal profession." Pursuant to that rule, the Court has determined that this opinion should not be published.

Background

On August 24, 1987, Wright filed a pro se petition under chapter 11 of the Bankruptcy Code which later converted to Chapter 7. On June 21 1988, NCNB and John Deere, Both creditors of Wright, filed adversary proceedings objecting to the discharge of their debts and seeking declaratory relief. Seven days later NCNB moved to inspect and appraise property Wright claimed as exempt. Shortly thereafter the bankruptcy court entered an order allowing both NCNB and John Deere access to the disputed property. The order required the creditors to provide five days notice to the inspection. Wright then

unsuccessfully moved to have his exemptions deemed granted.

Wright moved the court for protection when the creditors notified him of the date of inspection. The court considered and rejected the this request. When representatives of NCNB and John Deere arrived at Wright's home and announced their intentions to enter, no one answered the door. The creditors withdrew and informed the court. Wright responded by notifying all concerned that no access would be allowed, regardless of the court order.

John Deere moved for sanctions, citing Wright's contempt of the court's order, refusal to comply with discovery orders, and taking depositions without providing notice. NCNB and the trustee joined this motion. The bankruptcy court again ordered Wright to allow his creditors access to his home and to allow them to conduct a proper inspection and inventory. Wright filed a motion asking the court to reconsider. That motion was denied. Thereafter, after being notified of yet a third date of inspection,

Wright again refused to comply with the court's order.

On three occasions Wright argued to the bankruptcy court that his creditors should not be allowed access to his home. The court thrice rejected the argument and Wright thrice ignored the court's order. A third motion for sanctions was made. The Bankruptcy court conducted a full evidentiary hearing and then struck Wright's answer, entered a default judgement in favor of John Deere and NCNB, and denied Wright a discharge as the trustee had requested, and imposed monetary sanctions. The court noted from the bench that "It...appears that from the very start of this case, he set about to conceal his financial records..." The court denied Wright's motion for reconsideration.

On appeal, the district court affirmed the order; Wright timely appealed.

Analysis

The bankruptcy court's authority to sanction Wright flows from Bankruptcy Rule 7037 which adopts Fed. R.Civ. P.37.

Rule 37 provides: "[T]he court...may invoke such orders in regard to the failure [to comply] as are just, and among others the following: An order striking out pleadings...or dismissing the action... or rendering judgement by default against the disobedient party.". Fed. R. Civ.P. 37(b)(2) & (2) (C). Wright proceeded through the bankruptcy proceedings displaying open contempt for the process for the bankruptcy court's authority. The following colloquy is telling:

Q; So Mr. Wright if the court issues a fourth order or a fifth order compelling you to allow the creditors entry to your residence, to inspect and appraise the entire contents, you will continue to refuse to obey those orders?

A: I will refuse to let you in the house;yes, sir.

Wright claimed that virtually all property used an d enjoyed by him belonged to someone else and he refused to allow the trustee or his creditors access to the property to evaluate or determine the true ownership of the assets he held. The court found these claims of

second-party ownership to be suspect. Wright claims, for example,"that Cami Corporation owns lot of his household furniture and a condominium in New Mexico, which he enjoys" The bankruptcy court was aware of no business by that corporation.

Wright offered to place some disputed items out on his lawn for the creditors and the trustee to photograph. The court rejected this suggestion as ridiculous and concluded that Wright was afraid that expensive furnishings would quickly use up his $30,000 personal property exemptions. Given the necessity of the valuation and lack of iota of cooperation from Wright, the order allowing access to the property was reasonable;Wright's present arguments, which imply the contrary, are rejected.

Wright made it impossible for the trustee to carry out his responsibilities or for his creditors to protect their legitimate interests. More importantly, Wright placed himself above the law. Such conduct was not tolerated. Nor should it be.

Wright claims that the sanctions were improper because the creditors did not specify particular property in their objections to his claimed exemptions. This seems to beg the question, until the creditors have an opportunity to conduct discovery of the value the personal property held by Wright, they can hardly make specific objections. If the creditors could not make specific objections, it is due not to their slovenliness but to Wright's conduct after the court determined that an inspection was reasonable and necessary. It is not the debtor's place to pick and choose among the orders of the bankruptcy court he will honor.Self help is not an alternative to appeal.1 This is true even when the order appears to run afoul of constitutional guarantees.2

Wright invoked the aid of the court in seeking a benefit he desired-- a discharge of his debts in bankruptcy. As long as the court did his bidding he was inclined to obey. When orders adverse to Wright's position were issued he chose to ignore them without seeking interlocutory

appeal 3 or mandamus relief. Wright's conduct constituted open and notorious contempt of the bankruptcy court. We cannot an will not countenance such.

affirmed.

1Maness v. Meyers, 419 U.S. 449 (1975) ("Persons who make private determinations of the law and refuse to obey an order generally risk criminal contempt even if the order is ultimately ruled incorrect.") (citations omitted).

2United States v. Dickinson, 465 F.2d 496, 509 (5th Cir. 1972), cert. denied, 414 U.S. 979 (1973).

3See 28 U.S.C.§1334 (allowing interlocutory appeal to the district court upon leave of that court).

APPENDIX B

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

ABILENE DIVISION

IN re

R.D. WRIGHT, a/k/a DON WRIGHT, a/k/a R.DON WRIGHT

CASE NO. 188-10048-7

DEBTOR.

R.D.WRIGHT, a/k/a DON WRIGHT, a/k/a R.DON WRIGHT

APPELLANT,

v.

STANLEY W. WRIGHT, TRUSTEE,

CA NO.1-91-061-C c/w.

CA-191-602-C

APPELLEE

APPEAL FROM THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS JOHN C. AKARD, BANKRUPTCY JUDGE, PRESIDING

FILED JUNE 18,1992

ORDER

This case is before the court for consideration of the appeal of the debtor, R.D. WRIGHT, from the orders of the bankruptcy court imposing various sanctions upon him, including the denial of his discharge.

Appellant contends that the orders of the court were unlawful and violated of his constitutional rights and that the record does not support the denial of his discharge. This court must review the bankruptcy court's conclusions of law de novo. Sutton v. Bank One, Texas, N.A., 904 F.2d 327, 329 (5th Cir. 1990). The findings of fact of the bankruptcy court may not be set aside unless they are clearly erroneous. The court has considered carefully the written arguments of counsel and the record in this case and is of the opinion that the decision of the bankruptcy court should be affirmed. The findings of fact are not clearly erroneous. There is no reversible error in the conclusions of law.

It is, accordingly, ordered that the

decision of the bankruptcy court is, in all things, AFFIRMED.

The clerk shall furnish a copy of this order to each attorney of record.

Dated June 18, 1992.

s/Sam R. Cummings

SAM R. CUMMINGS

UNITED STATES DISTRICT JUDGE

APPENDIX C

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE NORTHERN DISTRICT OF TEXAS

ABILENE, TEXAS

IN re:

R. D. WRIGHT, ak/a DON WRIGHT, ak/a R.DON WRIGHT

Debtor

CASE NO. 188-10048-7

ORDER ON TRUSTEE'S MOTION FOR SANCTIONS

On the 25th day of June, 1990, the Court conducted a hearing on the motion for Sanctions filed May 7, 1990, by Stanley W. Wright, Trustee. Upon consideration of the motion, the responses thereto and the evidence presented and the arguments of counsel, the Court is of the opinion that the Motion for Sanctions is good and should be granted for the reason stated therein and by the Court on the record on June 29, 1990, which are adopted by reference.

THEREFORE,IT IS ORDERED, ADJUDGED and DECREED that the discharge of R. D. WRIGHT a/k/a DON WRIGHT, a/k/a R.DON WRIGHT, be and the same

hereby denied because of Debtor's refusal to obey orders of this court.

THEREFORE, IT IS ORDERED, ADJUDGED and DECREED that the Trustee shall have and recover of and from Debtor, the sum of $1,000.00

Dated: Oct 02,1990 .

s/JOHN C. ACKARD

HONORABLE JOHN C. ACKARD

UNITED STATES BANKRUPTCY JUDGE

APPROVED AS TO FORM:

s/TOM McILHANY

TOM McILHANY

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ATTORNEY FOR R.D. WRIGHT

s/ BILLY W. BOONE

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ATTORNEY FOR TRUSTEE

APPENDIX D

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE NORTHERN DISTRICT OF TEXAS

ABILENE, DIVISION

IN re:

R.D.WRIGHT NO. 188-10048-11

DEBTOR

ORDER

Upon consideration of the motion of First RepublicBank Abilene, N.A., formerly known as InterFirst Bank Abilene, N.A. ("Bank") for an Order Allowing Inspection and Appraisal of the Claimed Exempt Property of Debtor and it appearing that such action is proper;it is

ORDERED that Bank, its successors or assigns and /or John Deere Industrial Equipment Company may have their representatives and/or experts inspect and appraise the property claimed as exempt by Debtor upon five (5) days notice, in writing, to Debtor's counsel.

Signed this 30 day of Aug, 1988

s/John C. Akard

Judge Presiding

APPENDIX E

CRAIG WEINLEIN

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& BLUMENTHAL

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Attorneys for John Deere

Industrial Equipment Company

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE NORTHERN DISTRICT OF TEXAS

ABILENE, DIVISION

In re

R.D. WRIGHT,

DEBTOR

Case No. 188-10048-7

JOHN DEERE INDUSTRIAL

EQUIPMENT COMPANY

PLAINTIFF,

v.

Adversary No.188-1035

R.D. WRIGHT AND MICKI WRIGHT,

Defendants.

NOTICE OF APPRAISAL

Filed October 26 1988

COMES NOW John Deere Industrial Company and hereby provides notice that on Tuesday, November 2, 1988, at 9.00 a.m.,John Deere Industrial Equipment will enter the residence of R.D. Wright and Micki Wright in Abilene,Texas for inspection, appraisal, and inventory of its contents, and preservation of said inspection and appraisal by photography or videotape. John Deere Industrial Equipment Company will enter with an appraiser accompanied by counsel, and by this pleading, provides notice to all interested parties.

Respectfuly submitted,

s/Craig W. Weinlein

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